MOTION FILED
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No. 80-1749

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

FEDERAL ENERGY REGULATORY COMMISSION and
JAMES B. EDWARDS, SECRETARY OF ENERGY,
Appellants,

versus

THE STATE OF MISSISSIPPI, *ET AL*,
Appellees.

On Appeal from the United States District Court
for the Southern District of Mississippi

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF AMICUS CURIAE, LOUISIANA PUBLIC SERVICE COMMISSION IN SUPPORT OF APPELLEE'S MOTION TO AFFIRM

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

1.

The Louisiana Public Service Commission, Amicus Curiae, by and through Marshall B. Brinkley, its General Counsel, moves this Court for leave to file a brief as Amicus Curiae in support of the Motion to Affirm to

be filed by Appellees in this Court, and for grounds would show this Court that (1) the above Commission has a strong and legitimate interest in said appeal, and (2) that the above Commission has submitted a request for consent to the Secretary of Energy of the United States, but has received no reply as of this date.

2.

Mover has received consent to file such brief from the Solicitor General of the United States on behalf of the United States and the Federal Energy Regulatory Commission, but is uncertain whether such consent includes consent of the Secretary of Energy.

3.

Mover has received such consent from all other parties.

WHEREFORE, the Movant prays that this Court grant leave to file a brief in support of the Motion to Affirm in the above case.

Respectfully submitted,

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QUESTIONS PRESENTED

This brief is addressed solely to the question of whether this Honorable Court should affirm the judgment sought to be reviewed on appeal from a Federal District Court, which held that Titles I and III, and Section 210 of Title II of the Public Utility Regulatory Policies Act are not constitutional, because of the considered conclusion that it is manifest that the decision below was correct, and that there is no need for further briefs or oral arguments. A judgment on this primary question necessarily could involve a determination of two or possibly three subsidiary questions:

1) Do those portions of the statute, put in question on appeal, clearly constitute to the majority of the Court an unreasonable legislative pronouncement by Congress regarding what is to be considered "interstate commerce" and subject to congressional regulation? If so, the matter could be at an end; if not, then:

2) Is the majority of the Court satisfied that the Constitution of the United States, in enunciating the principle that the Federal Government may regulate commerce among the states, thereby delegates to the Congress the right to make the general police power of the several states subordinate to that specific grant in such a manner that Congress can dictate to a state agency what it must consider substantively and what procedures it must follow (Titles I and III of PURPA)

even though that state agency is proceeding under a traditional state police power and even though Congress has formulated no national policy regarding its standards? With respect to Section 210, even if it *has* established standards?

3) With respect to Section 210 of Title II of PURPA, as well as Titles I and III, do such sections violate the Tenth Amendment to the United States Constitution, or any other of its provisions, so as to fall within the ambit of *National League of Cities v. Usury*, 426 U.S. 833 (1976)?

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On Appeal from the United States District Court
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BRIEF OF AMICUS CURIAE, LOUISIANA PUBLIC SERVICE COMMISSION IN SUPPORT OF APPELLEE'S MOTION TO AFFIRM

INTEREST OF AMICUS

Amicus, Louisiana Public Service Commission, and its state agency predecessors, have been in existence since

1898, when the "Railroad, Express, Telephone, Telegraph, Steamboat and Sleeping Car Company Commission" was created at Article 283 of the Louisiana Constitution of 1898. This constitutionally recognized state agency was retained and its powers expanded at Article 283 of the Louisiana Constitution of 1913, Article 6, Section 3 of the Louisiana Constitution of 1921, and Article IV, Section 21 of the Louisiana Constitution of 1974. Since the adoption of the State Constitution of 1921, the Commission has regulated electric public utilities doing intrastate business within Louisiana, and by state constitutional mandate.[1] The pertinent part of the Louisiana State Constitution of 1921 stated:

> "§4. Public Service Commission; powers
>
> Section 4. The Commission shall have and exercise all necessary power and authority to supervise, govern, regulate and control all . . . electric light, heat and power, water works . . . and other public utilities in the state of Louisiana . . . .
>
> The power, authority, and duties of the Commission shall affect and include all matters and things connected with, concerning, and growing out of the service to be given, or rendered by the common carriers and public utilities hereby, or which may hereafter be

1 These Constitutions, in respect to the Public Service Commission, are annexed as Appendices A, B, C, and D. Subparagraph (C) of the 1974 Constitution permits certain local regulation.

made subject to supervision, regulation, and control by the Commission . . . .

The said Commission shall have the power to adopt and enforce such reasonable rules, regulations, and modes of procedure as it may deem proper for the discharge of its duties. . . ."

Id. at Article 6 §4

The current 1974 Constitution of the State of Louisiana reads, in pertinent part:

"Section 21. Public Service Commission

* * * * *

(B) Powers and Duties. The commission shall regulate all common carriers and public utilities . . . ."

La. Constitution of 1974,
Article IV, §21 (B)

We think it common knowledge that few, if any, of the several states remain without a similar regulatory agency, albeit some are called Corporation Commissions and others Railroad Commissions. Some of these commissions are constitutionally created; others are statutory creations of the respective state governments.

We are firm in the belief that the regulation of public utilities is a function of the state's police power. *Munn v. Illinois*, 94 U.S. 113 (1876). The rationale of *Munn* is that because of the very nature of the enterprise the property of the utility is "affected with a public interest" and subject to state regulation. As *Munn* discloses, this power has its roots deep in common law as an element of sovereignty.

Regardless of other jurisdictions, by constitutional mandate as well as enacting statutes, found in Title 45 of the Louisiana Revised Statutes of 1950, the Louisiana Public Service Commission has for almost 60 years been charged by the citizens of the State with the regulation, under its police powers, of the rates and service practices exacted and rendered respectively by electric public utilities for business done on an intrastate basis within Louisiana, while, as a general rule, interstate business (power exchanges among interstate companies or for interstate purposes, wholesale rates among companies for power which crosses or could cross state lines, and the like) was regulated by the Federal Power Commission, now the Federal Energy Regulatory Commission, hereinafter FERC. See the Federal Power Act, 16 U.S.C. 791 *et seq.* and change of name at 91 Stat. 565, Pub. L. 95-91, August 4, 1977. See particularly Section 824 of the Federal Power Act captioned "Regulation of Electric Utility Companies Engaged in Interstate Commerce."

For half a century prior to PURPA, the "Public Utility Regulatory Policies Act," Pub. L. 95-617, we perceive the Federal Power Act as recognizing the wisdom, the legitimate interest, and, perhaps, the constitutional right of a state to regulate the intrastate rates and services of companies whose property was "affected with a public interest" because of their privileged position and status. With the advent of PURPA, the constitutionality of which is here at issue, the Congress of the United States has departed from that principle and imposed on duly constituted state commissions the onerous and expensive liabilities and obligations only outlined on pages 3-11 of appellant's Jurisdictional Statement, and set forth in particular on pages 12a through 67a of that document.

The Louisiana Public Service Commission has directed its counsel to file a brief as *amicus curiae* in this matter, aligning itself generally with the State of Mississippi and Mississippi Public Service Commission. The Commission does not question the worthiness or unworthiness *per se* of the standards and procedures of PURPA. It does question the constitutionality of the Congress' attempt (Titles I and III) to command a state agency having state constitutional status to consider whether to adopt standards and follow procedures which not only clearly, directly, and sometimes exclusively affect local sales and service practices of electric public utilities, but are titles which simultaneously displace the state agency's freedom of action and consideration in its own realm by imposing on it affirma-

tive burdens to make certain choices and to report back to Congress' agent in writing. And, as to the entirety of the Act, to the extent that Congress (or FERC) now has directed or may direct state commissions to consider certain substantive notions, adopt certain regulations, and follow certain procedural steps affecting every local sale or service practice made in what has historically been recognized as intrastate commerce, PURPA represents a complete departure from the historical recognition by Congress of autonomous and integral state governmental police function, and in the Louisiana Commission's view must be viewed as constituting a usurpation of an elected state official's power and function. When comprehensively viewed, we believe the questioned Titles of PURPA to be an inadvertent but unconstitutional intrusion by the Federal Government into matters which have been historically recognized as being within the autonomy of the several states under the general police power. We know of no congressional directive except, perhaps, in the area of civil liberties, which so overtly mandates state officials to act on behalf of the Federal Government, both substantively and procedurally, and absent policy, particularly in areas long since the subject of state regulation under the general police power. And, if this legislation is finally accorded constitutional status, we are unaware of any real or imagined practical restraint on the power of the United States Congress to order virtually anything to be done by a state and its elected officials and employees, which it, the Congress, deems appropriate for the times.

Finally, we do not think that any authoritative decision of this Honorable Court has ever held that the commerce power may be used so extensively as to make a federal agency out of a state agency and thereby practically destroy that state's autonomy.[2] Surely we hope

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2 In *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) Chief Justice Marshall stated:

> "They (inspection laws) form a portion of that immense mass of legislation, which embraces everything within the territory of a state, not surrendered to the government; all of which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state, and those which respect turnpike roads, ferries, etc. are components of this mass.
>
> No direct general power over these objects is granted to congress . . . . If the legislative power of the Union can reach them, it must be . . . clearly incidental to some power which is expressly given . . . . If Congress license vessels . . . the act . . . *implies no claim of direct power to regulate the purely internal commerce of a state, or to act directly on its system of police* . . . ." (Parenthetical expression and emphasis supplied.)
>
> 22 U.S. at 204
> 9 Wheat. at 89, 90

We submit that Titles I and III of the instant Act overtly purport to act directly on the state agency given the police power to regulate public utilities, a power that arises not from commerce as such, but from status of the regulated. The state is thus deprived of its individuality in exercising its power. While we believe that Congress could obtain most of its objectives in possibly a number of ways, we do not believe that it may do so by mandating a state agency, proceeding under its own powers, on matters as local as procedures for disconnection for non-payment, to act *for* Congress. It is not argued by appellants that the exercise of state power is here *in conflict* with congressional intention or of the regulation of interstate commerce, so the question of state law "yielding" could well be absent.

that it is not the political process alone to which such a state might turn for redress, since the results of a political process itself should be bound by the notion of constitutional restraints. To the contrary, we are reluctant to say that the *results* of political processes are free of certain checks and balances. We do not believe that any specific and enumerated constitutional grant of power to the Federal Government can be read in a manner such that Congress can, by the exercise of that *specific* grant of authority, abrogate by mandamus the reservation to the states of other powers long recognized to be general in nature and intrinsic to the notion of autonomy and sovereignty. But we believe that the general police power, touching upon virtually everything a utility does on a local and even individual level, can be nothing less. Certainly the police power to regulate public utilities because of the nature of their important and privileged status is not an exercise *per se* of a state's attempt to regulate even intrastate commerce as such. And if the police power deriving from the status of public utility was not delegated, it must have been reserved.

PRELIMINARY CONSIDERATIONS

As a preliminary matter, and in the interest of clarity, it would seem appropriate to delineate briefly what we suggest that this matter does and does not involve:

1) This case is not involved with the validity of state action which affects interstate commerce, such as the state statute which was struck in *Gibbons v. Ogden*, 9 Wheat. 1, 6 L.Ed. 23 (1824).

2) This case does not deal with any known conflict of state and federal laws pertaining to the flow of commerce, whether intrastate or interstate.

3) With respect to Titles I and III of PURPA, this case does not deal with the question of whether Congress might prescribe a single authority of its creation to establish a uniform regulation dealing with interstate commerce, or establish a uniform policy itself, such as spoken of in *So. Pacific Co. v. Arizona*, 325 U.S. 761, 65 S.Ct. 1515 (1945), *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 1 L.Ed.2d 601, 77 S.Ct. 598 (1957), and even as involved in *National League of Cities v. Usury*, 426 U.S. 833 (1976).

4) As we perceive it, this case does involve the question of whether the Congress, supposedly acting through the Commerce Clause, may dictate to a state agency operating under the state's general police power, and on a state budget, the standards and procedures under which that agency must proceed, especially considering the fact that no uniform nation-

al policy is expressed in the substance of the Congressional Act dealing with such standards (Titles I and III of PURPA).

5) With respect to Section 210 of Title II of PURPA, as well as Titles I and III, this case deals with the applicability of *Usury, supra.*

REASONS WHY THE JUDGMENT SHOULD BE AFFIRMED

We have perused the citations, cases, arguments, and briefs of appellants and appellees and, knowing that they will be represented in this Court, perceive no useful purpose in reviewing extensively the same in this brief, nor do we wish merely to adopt a "me-too" attitude as to the ramifications of *National League of Cities v. Usury, Secretary of Labor,* 426 U.S. 833 (1976), which we believe to hold, at the minimum, but with a vigorous dissent, that the individual states possess, as a matter of constitutional law, a freedom from federal interference to structure their operations in areas of traditional integral state governmental function. We do take issue with the assertion, or more concisely the conclusion, by appellants, at page 18 of the Jurisdictional Statement, that "the regulation of public utilities is not analogous to the traditional state functions described as typical in *Usury*: fire prevention, police protection, sanitation, public health, and parks and recreation." We believe state regulation of a public utilities to be clearly

and historically within the general police power of the individual state.[3]

As indicated *supra*, the citizens of the State of Louisiana have regarded the regulation of public utilities as comprising an integral function of state government such as to justify the constitutional creation of an elected state agency to regulate such entities as early as 1898. Apparently it is conceded by appellants that the Federal Power Commission and Court heretofore have acted only to fill the gaps not within the reach of state regulation. Jurisdictional Statement, p. 17. But up until now, we know of no authority, other than Titles I and III of PURPA, for the proposition that historical state police functions may be dictated to a state agency in such a sweeping manner by the United States Congress, either in substance or procedure, perhaps under the rubric of "concurrent jurisdiction," although the only result of concurrency in this matter is the predictable and overwhelming effect of the Congressional mandate. In effect, the state becomes an agent of the

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3 *Munn v. Illinois*, 94 U.S. 113 (1876) so held. See also 73 C.J.S., Public Utilities, §11, p. 1006. As we perceive the matter, it is not at question here whether the police power to regulate public utilities by reason of the nature of the utility's role in society is a traditional or integral element of sovereignty; the limited question as we see it is: do the states reserve this power in the face of the commerce clause as attempted to be exercised, to the detriment of a state agency, in PURPA? We think that the states must; if they do not, then we see no limitation whatsoever to federal dictation to and supervision of historically recognized state agency activities falling under the rule of *Munn* and being within the general police power of the individual state itself.

Federal Government, although the state's power to regulate public utilities is not based *per se* on commerce, and the state employees and public officials are neither hired by nor compensated by the Federal Government. With respect to Titles I and III, this mandate is either without a policy, or implies in part a social and not commercial policy.

A government may fail or indeed fall in several ways, and it has been this country's good fortune to resist in general, but not without the sacrifice of a civil war, the pitfalls that human governments, politics, and power may entail. We think it beyond debate that history will applaud the creation of a new constitution in 1787, a rejection of the unworkability of the previous confederation. The 1878 Constitution was nevertheless a framework for the distribution of powers such that even Washington, himself a supporter of centralization, is quoted in his Farewell Address.[4]

XXXX

> "However combinations or associations of the above description may now and then answer popular ends, they are likely in the course of time and things, to become potent engines by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for them-

4 Angle, Paul M. *By These Words;* Rand McNally & Co. 1954 p. 203.

selves the reins of government, destroying afterward the very engines which have lifted them to unjust dominion.

"Toward the preservation of your government . . . it is requisite . . . that you resist with care the spirit of innovation upon its principles however specious the pretexts. One method of assault may be to effect in the forms of the Constitution alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown.

XXXX

. . . . "Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian . . . ."

In light of the constitutional guarantees to the states at the time, with which the speaker was so intimately familiar, we do not think Washington was addressing the distribution of powers exclusively on the tripartite federal level. Neither do we regard these words as the ingratiating or self-congratulatory statements of a retiree. And the theme of the preservation of liberty through the distribution of powers in the American system has persisted throughout the decades, from the time of the Tenth Amendment, being repeated somewhat ironically, but not without significant meaning, in President Andrew Johnson's Annual Message to Congress on December 3, 1866:[5]

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5 *Ibid.*, 394.

XXXX

"In our efforts to preserve 'the unity of government which constitutes us one people,' by restoring the states to the condition which they held prior to the rebellion, we should be cautious, lest, having rescued our nation from perils of threatened disintegration, we resort to consolidation, and in the end, absolute despotism, as a remedy . . . .

XXXX

"Jackson held that the action of the general government should always be strictly confined to the sphere of its appropriate duties, and justly and forcibly argued that our government is not to be maintained nor our Union preserved 'by invasions of the rights and powers of the several states. In thus attempting to make our general government strong, we make it weak. Its true strength consists in leaving individuals and states as much as possible to themselves . . . leaving each to move obstructed in its proper constitutional orbit.' "

This notion of President Johnson must gain stature in light of its apparent unpopularity at the time it was pronounced.

If PURPA is enforced against the State of Louisiana, its elected officials must follow Congress' or its agent's

directives; its courts must allow the Secretary's interventions; and its citizens must finance to some degree Congress' intrusions into a general area vested by state constitution for over 80 years in an elected state agency not even alleged to be responsible for the energy problem supposedly, but not consistently, addressed. (Indeed, some of the directives of PURPA, such as consideration of lifeline rates, and disconnection procedures, are patently non-conservation and non-energy oriented.)

Virtually all uses, movements, and alterations of power can be justified constitutionally, or perhaps rationalized, in the end, since virtually any new application of sweeping power by Congress or any other governmental branch has an effect on "interstate commerce." We wish to make clear that we do not believe PURPA to have been conceived by men of ill wishes, nor for an ill purpose. We do believe that it represents an error of law and judgment which threatens to invite Congressional directives to be issued to many, if not ultimately all, state elected officials and employees — directives to consider, publish, notice, hear, allow, and otherwise respond in writing by reason of the Federal Congress' notion of what might be best for the state governments to do at the moment. And we gain little solace by the knowledge that Congress can undo sometime later what it might erroneously have done in the first place. Some state agencies are simply not strong politically, but their protection should be no less secure.

In Jefferson's first Inaugural Address, he attempted to summarize his view of our system of government:[6]

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"Equal and exact justice to all men, of whatever state or persuasion, religious or political; peace, commerce, and honest friendship with all nations, entangling alliances with none; *the support of the state governments in all their rights, as the most competent administrators for our domestic concerns and the bulwarks against antirepublican tendencies; the preservation of the general government in its whole constitutional vigor,* as the sheet anchor of our peace at home and safety abroad; a jealous care of the right of election by the people — a mild and safe corrective of abuses . . . acquiescence in the decisions of the majority, the vital principle of republics . . . a well disciplined militia . . . the supremacy of the civil over the military . . . economy in the public expense . . . an honest payment of our debts . . . encouragement of agriculture, and of commerce as its handmaid . . . the diffusion of information . . . freedom of religion . . . press . . . and of the person . . . .

"These principles . . . (have) gone before us and guided our steps . . . and should we wander from them in movements of error or of

6 *Ibid.*, 223-24.

alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety." (Parenthetical expression and emphasis added.)

The Louisiana Public Service Commission is of the view that PURPA's pronouncements are clearly an unwarranted intrusion into traditional integral state police and general welfare functions. Indeed, we fail to see how the multiple directives and commandments of Titles I and III reasonably could be viewed in any other way. In many ways, we view the Act as forthrightly paternal. We believe that the Judge below was correct in result, and clearly so. We view Titles I and III of PURPA to go well beyond the prohibition enunciated in *Usury, supra,* because of the positive steps required of the states for compliance. We think Section 210 or Title II to be within *Usury.* We urge that the Court entertain a similar view, and find the matter not subject to more elaborate presentation.

CONCLUSION

A laudable general purpose or motive alone should not serve purely of itself to save otherwise unconstitutional legislation, and a sensible rationale that rests on general social and economic considerations, no matter how seemingly appropriate, should not be the crowbar by which the dual form of government, guaranteed by the United States Constitution, is pryed and discarded from a system that has proved itself worthy regardless of the present difficulties, difficulties that are hopefully and perhaps even forseeably temporary.

It is, after all, not the state commissions who are accused of wrongdoing, as Congress' enigmatic directive to consider, but perhaps not enact, discloses. Certainly no national policy on interstate commerce is propounded by Titles I and III of PURPA. And while Congress deserves immense respect as a responsible and necessary element of our government, we think it clear that even a "living" Constitution must retain its backbone.

Respectfully submitted,

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CERTIFICATE

I hereby certify that three copies of the foregoing Amicus Curiae Brief on behalf of the Louisiana Public Service Commission, have this day been mailed to all counsel of record, by United States Mail, postage prepaid. A service list is attached as Appendix E.

Baton Rouge, Louisiana, this ____ day of May, 1981.

MARSHALL B. BRINKLEY

APPENDIX A

Louisiana State Constitution of 1898

Art. 284
RAILROAD, EXPRESS, ETC.

RAILROAD, EXPRESS, TELEPHONE, TELEGRAPH, STEAMBOAT AND SLEEPING CAR COMPANY COMMISSION

Art. 283. A Railroad, Express, Telephone, Telegraph, Steamboat and other Water Craft, and Sleeping Car Commission, is hereby created; to be composed of three members, to be elected from the districts hereinafter named, at the time fixed for the Congressional election of 1898. Of the three commissioners elected in the year 1898, one shall serve two years, one shall serve four years, and one shall serve six years, the period each is to serve to be determined by lot; thereafter the commissioners from each district shall be elected for a term of six years. They shall be known as the Railroad Commission of Louisiana. The Commission shall meet and open an office and have its domicile at Baton Rouge, and shall elect one of their number chairman, and may appoint a secretary at a salary of fifteen hundred dollars per annum, and may meet and hold regular or special hearings at such other places as they may find necessary. No member of this Convention shall be eligible to election or appointment as a member of said Commission, prior to the year 1908.

Art. 284. The power and authority is hereby vested in the Commission, and it is hereby made its duty, to adopt, change or make reasonable and just rates, charges and regulations, to govern and regulate railroad, steamboat and other water craft, and sleeping car, freight and passenger tariffs and service, express rates, and telephone and telegraph charges, to correct abuses, and prevent unjust discrimination and extortion in the rates for the same, on the different railroads, steamboat and other water craft, sleeping car, express, telephone and telegraph lines of this State, and to prevent such companies from charging any greater compensation in the aggregate for the like kind of property or passengers, or messages, for a shorter than a longer distance over the same line, unless authorized by the Commission to do so in special cases; to require all railroads to build and maintain suitable depots, switches and appurtenances, wherever the same are reasonably necessary at stations, and to inspect railroads and to require them to keep their tracks and bridges in a safe condition, and to fix and adjust rates between branch or short lines and the great trunk lines with which they connect, and to enforce the same by having the penalties hereby prescribed inflicted through the proper courts having jurisdiction.

The Commission shall have power to adopt and enforce such reasonable rules, regulations, and modes of procedure, as it may deem propoer for the discharge of its duties, and to hear and determine complaints that may be made against the classification or rates it may

establish, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts, required or authorized by these provisions They shall have power to summon and compel the attendance of witnesses, to swear witnesses, and to compel the production of books and papers, to take testimony under commission, and to punish for contempt, as fully as is provided by law for the district courts.

Art. 285. If any railroad, express, telephone, telegraph, steamboat and other water craft, or sleeping car company, or other party in interest, be dissatisfied with the decision or fixing of any rate, classification, rules charge, order, act or regulation, adopted by the Commission, such party may file a petition setting forth the cause of objection to such decision, act, rule, rate, charge, classification or order, or to either or to all of them, in a court of competent jurisdiction, at the domicile of the Commission, against said Commission as defendant, and either party to said action may appeal the case to the Supreme Court of the State, without regard to the amount involved, and all such cases, both in the trial and appellate courts, shall be tried summarily, and by preference over all other cases. Such cases may be tried in the court of the first instance either in chambers, or at term time; provided, all such appeals shall be returned to the Supreme Court within ten days after the decision of the lower court; and where the Commission appeals, no bond shall be required. No bond

shall be required of said Commission in any case, nor shall advance costs, or security for costs, be required of the Commission.

Art. 286. If any railroad, express, telephone, telegraph, steamboat, or other water craft, or sleeping car company, subject hereto, directly or indirectly, or by any special rate, rebate, or other device, shall intentionally charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation for any service rendered by it, than it charges, demands or receives from any other person, firm or corporation, for doing a like and contemporaneous service, or shall violate any of the rates, charges, orders or decisions of said Commission, such railroad, steamboat or other water craft, express, telegraph, telephone or other company, shall forfeit and pay to the State not less than one hundred dollars, nor more than five thousand dollars, to be recovered before any court of competent jurisdiction, at the suit of said Commission, at the domicile of the Commission or of the company, or at the place where the complaint arises, at the option of the Commission. Provided, that whenever any rate, order, charge, rule or regulation of the Commission is contested in court, as provided for in Article 285 of this Constitution, no fine or penalty for disobedience thereto, or disregard thereof, shall be incurred until after said contestation shall have been finally decided by the courts, and then only for acts subsequently committed.

The power of the Commission shall affect only the transportation of passengers, freight, express matter, and telegraph and telephone messages, between points within this State, and the use of such instruments within this State.

Art. 287. Until otherwise provided by law, the members of the Commission shall each receive a salary of three thousand dollars per annum, payable monthly on his own warrant, and their actual traveling expenses, and those of their secretary; which expenses, and the salary of the latter, shall be paid on the warrant of the Chairman of the Commission on a sworn statement of their correctness.

Nothing herein shall prevent the railroad, express, telegraph, telephone and steamboat or other water craft, or other companies, from serving free of cost, or at reduced rates, the State or any city, parish, or town government, or any charitable purpose, or any fair or exposition, or any destitute or indigent person, or the issuance of mileage or excursion tickets; nor to prevent railroads, steamboats or other water craft, from giving free transportation to ministers of religion, or inmates of hospitals, or to railroad officers, agents, employees, attorneys, stockholders or directors, unless otherwise provided by this Constitution.

Art. 288. Upon the recommendation of the Commission the Legislature may add to or enlarge the powers and duties of said Commission, or confer other

powers and duties on them. They may also provide additional clerical, or other assistance, that may be deemed necessary for the discharge of the duties of said Commission, and may add other penalties to make the work of said Commission effective.

It shall be the duty of the Attorney General, and the various district attorneys, to aid said Commission, in all legal matters, for which they shall receive not exceeding 25 per cent. of all fines and forfeitures collected by them; provided, the Commission may employ other attorneys in lieu of these officers on like terms.

No person in the service of, or attorney for, any railway, express, telephone, telegraph, steamboat or other water craft, sleeping car company or corporation, or pecuniarily interested in such company or corporation, shall hold the office of Commissioner.

The fines collected, after paying the attorney's fees and the costs in suits, in which the Commission may be cast for costs, shall be paid into the State Treasury.

Art. 289. The State is hereby divided into three Railway Commission Districts, and one Commissioner shall be elected from each of said districts by a plurality of the voters of the respective districts. The First District shall comprise the parishes of Orleans, Plaquemines, St. Bernard, Jefferson, St. Charles, St. John the Baptist and St. James. The Second District shall comprise the parishes of Iberville, Ascension, Assumption,

Lafourche, Terrebonne, St. Mary, Iberia, St. Martin, Lafayette, Vermillion, Cameron, Calcasieu, Avoyelles, St. Landry, Pointe Coupe, West Feliciana, East Feliciana, West Baton Rouge, East Baton Rouge, St. Helena, Livingston, Tangipahoa, Washington, St. Tammany and Acadia. The Third District shall comprise the parishes of Rapides, Vernon, Sabine, Grant, Natchitoches, Winn, Red River, DeSoto, Caddo, Bossier, Webster, Bienville, Concordia, Caldwell, Franklin, Tensas, Madison, Richland, Ouachita, Jackson, Lincoln, Union, Morehouse, East Carroll, West Carroll, Claiborne and Catahoula.

APPENDIX B

Louisiana State Constitution of 1913

RAILROAD, EXPRESS, TELEPHONE, TELEGRAPH, STEAMBOAT AND SLEEPING CAR COMPANY COMMISSION

Art. 283. A Railroad, Express, Telephone, Telegraph, Steamboat and other Water Craft, and Sleeping Car Commission, is hereby created; to be composed of three members, to be elected from the districts hereinafter named, at the time fixed for the Congressional election. The commissioners from each district shall be elected for a term of six years. The terms of the present Commissioners shall expire as follows:

1st District, 1916; 2nd District, 1914, and 3rd District, 1918. They shall be known as the Railroad Commission of Louisiana. The Commission shall meet and open an office and have its domicile at Baton Rouge, and shall elect one of their number chairman, and may appoint a secretary at a salary of fifteen hundred dollars per annum, and may meet and hold regular or special hearings at such other places as they may find necessary.

Art. 284. The power and authority is hereby vested in the commission, and it is hereby made its duty, to adopt, change or make reasonable and just rates, charges and regulations, to govern and regulate railroad, steamboat and other water craft, and sleeping car, freight and passenger tariffs and service, express rates, and telephone and telegraph charges, to correct abuses, and prevent unjust discrimination and extortion in the rates for the same, on the different railroads, steamboat and other water craft, sleeping car, express, telephone and telegraph lines of this State, and to prevent such companies from charging any greater compensation in the aggregate for the like kind of property or passengers, or messages, for a shorter than a longer distance over the same line, unless authorized by the commission to do so in special cases; to require all railroads to build and maintain suitable depots, switches and appurtenances, wherever the same are reasonably necessary at stations, and to inspect railroads and to require them to keep their tracks and bridges in a safe condition, and to fix and adjust rates between branch or short lines and the great trunk lines

with which they connect, and to enforce the same by having the penalties hereby prescribed inflicted through the proper courts having jurisdiction.

The commission shall have power to adopt and enforce such reasonable rules, regulations, and modes of procedure, as it may deem proper for the discharge of its duties, and to hear and determine complaints that may be made against the classification or rates it may establish, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts, required or authorized by these provisions. The Commissioners shall have power to summon and compel the attendance of witnesses, to swear witnesses, and to compel the production of books and papers, to take testimony under commission, and to punish for contempt as fully as is provided by law for the district courts.

Art. 285. If any railroad, express, telephone, telegraph, steamboat and other water craft, or sleeping car company, or other party in interest, be dissatisfied with the decision or fixing of any rate, classification, rule, charge, order, act or regulation, adopted by the Commission, such party may file a petition setting forth the cause of objection to such decision, act, rule, rate, charge, classification or order, or to either or to all of them, in a court of competent jurisdiction, at the domicile of the commission, against said commission as defendant, and either party to said action may appeal the

case to the Supreme Court of the State, without regard to the amount involved, and all such cases, both in the trial and appellate courts, shall be tried summarily, and by preference over all other cases. Such cases may be tried in the court of the first instance either in chambers, or at term time; provided, all such appeals shall be returned to the Supreme Court within ten days after the decision of the lower court; and where the commission appeals, no bond shall be required. No bond, advanced costs or security for costs shall be required of said Commission in any case.

Art. 286. If any railroad, express, telephone, telegraph, steamboat, or other water craft, or sleeping car company, subject hereto, directly or indirectly, or by any special rate, rebate, or any other device, shall intentionally charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation for any service rendered by it, than it charges, demands or receives from any other person, firm or corporation, for doing a like and contemporaneous service, or shall violate any of the rates, charges, orders, rules or decisions of said Commission, such railroad, or steamboat, or other water craft, express, telegraph, telephone, or sleeping car company, shall forfeit and pay to the State not less than One Hundred Dollars nor more than Five Thousand Dollars, to be recovered before any court of competent jurisdiction, at the suit of the State, at the domicile of the commission.

Provided, that every order or decision of the commission fixing and establishing a rate or charge for the transportation of passengers or freight, or for the transmission of messages or conversations by telephone or telegraph, within the State shall go into effect at such time as may be fixed by the commission and shall remain in effect and be complied with, unless and until set aside by the commission, or by a final judgment of a court of competent jurisdiction, rendered on final trial in a suit to set aside and annul the same.

Provided, that, whenever any rate, charge, rule, regulation, order or decision of the commission is contested in court, as provided by this Constitution, or by any amendment thereto, and the same is maintained on final trial by a court of competent jurisdiction, the railroad, express, telephone, telegraph, steamboat or other water craft, or sleeping car company, or corporation contesting the same, shall forfeit and pay to the State of Louisiana the sum of not less than Ten ($10.00) Dollars, nor more than Fifty ($50.00) Dollars per day, for each day that the putting into effect and operation of the rate, order, charge, rule, regulation, or decision of the commission may have been suspended by such suit, to be found and adjudged by the court in which such suit may be brought; and in all such cases the said court shall, in its judgment, maintaining said rate, charge, rule, regulation, order or decision, enter up a decree and judgment against the plaintiff therein, condemning such plaintiff to pay to the State of Louisiana the amount of the said penalty of forfeiture so found

and adjudged by it, which amount, after deducting therefrom the attorney's fees provided by this Constitution, shall, when collected, be paid into the State treasury for account of the General School Fund of the State. The power and authority of the commission shall affect and include not only the transportation of passengers, freight, express matter, and telegraph and telephone messages between points within this State, and the use of such instruments within this State, but shall also affect and include all matters and things connected with and concerning the service to be given by railroad, express, telephone, telegraph, steamboat and other water craft, and sleeping car companies, and corporations in the State, and their operations within the State.

Art. 287. Until otherwise provided by law, the members of the commission shall each receive a salary of three thousand dollars per annum, payable monthly on his own warrant, and their actual traveling expenses, and those of their secretary; which expenses, and the salary of the secretary, shall be paid on the warrant of the Chairman of the commission on a sworn statement of their correctness.

Nothing herein shall prevent railroad, express, telegraph, telephone and steamboat or other water craft, or other companies, from serving free of cost, or at reduced rates, the State or any city, parish, or town government, or any charitable purpose, or any fair or exposition, or any destitute or indigent person, or the

issuance of mileage or excursion tickets; nor to prevent railroads, steamboats or other water craft, from giving free transportation to ministers of religion, or inmates of hospitals, or to railroad officers, agents, employes, attorneys, stockholders or directors, unless otherwise provided by this Constitution.

Art. 287. [As amended Acts 1916, No. 271, adopted Nov. 7, 1916]. Until otherwise provided by law, the members of the commissions shall each receive a salary of three thousand dollars per annum, payable monthly on his own warrant, and their actual traveling expenses, and those of their secretary; which expenses and the salary of the secretary shall be paid on the warrant of the chairman of the commission on a sworn statement of their correctness.

Nothing herein shall prevent railroad, express, telegraph, telephone and steamboat or other water craft, or other companies, from serving free of cost, or at reduced rate, the State or any city, parish, or town government, or any charitable purpose, or any fair or exposition, or any destitute or indigent person or the issuance of mileage or excursion tickets; nor to prevent railroads, steamboats or other water craft from giving free transportation to ministers of religion, or inmates of hospitals, or to railroad officers, agents, employees, attorneys, stockholders or directors, or to officers and employees of the departments or institutions of this State established and created for the dissemination of knowledge relating to scientific agricul-

ture, provided, that said officers and employees of agricultural departments and institutions use such free transportation solely in the discharge of their official duties.

Art. 288. The General Assembly may add to or enlarge the powers and duties of said commission, or confer other powers and duties on them and may also provide additional clerical or other assistance that may be deemed necessary for the discharge of the duties of said commission, and may add other penalties to make the work of said commission effective.

It shall be the duty of the Attorney-General and the various District Attorneys, to aid said Commission in all legal matters, for which they shall receive not exceeding 25 per cent of all fines and forfeitures collected by them; provided, the Commission may employ other attorneys in lieu of these officers on like terms.

No person in the service of, or attorney for, any railway, express, telephone, telegraph, steamboat, or other water craft, sleeping car company or corporation, or pecuniarily interested in such company or corporation, shall hold the office of commissioner.

The fines collected, after paying the attorneys' fees and the costs in suits, in which the Commission may be cast for costs, shall be paid into the State treasury.

Art. 289. The State is hereby divided into three Railway Commission Districts, and one Commissioner shall be elected from each of said districts by a plurality of the voters of the respective districts. The First District shall comprise the parishes of Orleans, Plaquemines, St. Bernard, Jefferson, St. Charles, St. John the Baptist and St. James. The Second District shall comprise the parishes of Iberville, Ascension, Assumption, Lafourche, Terrebonne, St. Mary, Iberia, St. Martin, Lafayette, Vermilion, Cameron, Allen, Beauregard, Jefferson Davis, Calcasieu, Avoyelles, St. Landry, Evangeline, Pointe Coupee, West Feliciana, East Feliciana, West Baton Rouge, East Baton Rouge, St. Helena, Livingston, Tangipahoa, Washington, St. Tammany and Acadia. The Third District shall comprise the parishes of Rapides, Vernon, Sabine, Grant, Natchitoches, Winn, Red River, DeSoto, Caddo, Bossier, Webster, Bienville, Concordia, Caldwell, Franklin, Tensas, Madison, Richland, Ouachita, Jackson, Lincoln, Union, Morehouse, East Carroll, West Carroll, Claiborne, LaSalle and Catahoula.

APPENDIX C

Louisiana State Constitution of 1921

§3. Public service commission

Section 3. Creation; composition; qualifications; election. There is hereby created a Commission, to be known as the Louisiana Public Service Commission, which shall be composed of three members, who shall be duly qualified electors, to be elected from the districts hereinafter named, at the time fixed for the Congressional elections.

Persons disqualified; acts of commission. No person in the employ of or holding any official relation to any common carrier or public utility under the control of said Commission, or owning any stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. The act of two members when in session shall be the act of the Commission.

Term; compensation; employees; expenses; domicile; meetings. The three members of the Railroad Commission of Louisiana in office upon the adoption of this Constitution shall be the members of the Louisiana Public Service Commission and shall serve out the terms for which they were respectively chosen. Upon the expiration of the term of each commissioner his successor shall be chosen for a term of six years. Until

otherwise provided by the Legislature, the salary of each commissioner shall be three thousand dollars ($3,000.00) per annum, payable monthly, on his own warrant. The Commission shall appoint a Secretary and fix his salary, and shall appoint such other employees as may be provided by the Legislature. The commissioners, their attorneys and employees shall receive actual traveling expenses when traveling on business for the Commission. The Commission shall have its domicile at the State Capital, but may meet, hold investigations, and render orders elsewhere in this State.

§4. Public service commission; powers

Section 4. The Commission shall have and exercise all necessary power and authority to supervise, govern, regulate and control all common carrier railroads, street railroads, interurban railroads, steamboats and other water craft, sleeping car, express, telephone, telegraph, gas, electric light, heat and power, water works, common carrier pipelines, canals (except irrigation canals) and other public utilities in the State of Louisiana, and to fix reasonable and just single and joint line rates, fares, tolls or charges for the commodities furnished, or services rendered by such common carriers or public utilities, except as herein otherwise provided; it is further provided, however, that the Commission shall have no power or authority to supervise, govern, regulate, and control any aspect of sales of natural gas direct to industrial users for fuel or for utilization in any manufacturing process, whether such

direct sales are made by natural gas producers, natural gas pipeline companies, natural gas distribution companies, or any other person engaging in such sale of natural gas.

The power, authority, and duties of the Commission shall affect and include all matters and things connected with, concerning, and growing out of the service to be given or rendered by the common carriers and public utilities hereby, or which may hereafter be made subject to supervision, regulation and control by the Commission, provided, however, that the power and authority of the Commission shall not extend to any aspect of direct sales of natural gas to industrial users for fuel or for utilization in any manufacturing process. The right of the Legislature to place other public utilities under the control of and confer other powers upon the Louisiana Public Service Commission respecting common carriers and public utilities is hereby declared to be unlimited by any provision of this Constitution.

The said Commission shall have power to adopt and enforce such reasonable rules, regulations, and modes of procedure as it may deem proper for the discharge of its duties, and it may summon and compel the attendance of witnesses, swear witnesses, compel the production of books and papers, take testimony under commission, and punish for contempt as fully as is provided by law for the district courts.

(Amended by Acts 1964, No. 531, adopted Nov. 3. 1964.)

§5. Public service commission; orders, effective date; injunction; review; enforcement; appeals

Section 5. The orders of the Commission fixing or establishing any rate, fare, toll or charge for any commodity furnished, service rendered, or to be rendered, by any common carrier or public utility named herein, or hereafter placed under the control of said Commission, shall go into effect at such time as may be fixed by the Commission, and shall remain in effect and be complied with, unless and until set aside by the Commission, or by a final judgment of a court of competent jurisdiction, in a suit setting aside and annulling the same; provided, however, that if an interlocutory injunction is applied for, and if of opinion that irreparable loss or damage would result to plaintiff unless a temporary restraining order is granted, the judge of the district court having jurisdiction may grant a temporary restraining order, to remain in force only until the hearing and determination of the application for an interlocutory injunction; provided, that no injunction shall issue until after five days notice has been given the Commission.

The orders of the Commission shall be enforced by the imposition of penalties as hereinafter provided, and any party in interest may appeal from orders and decrees of the Commission to the courts by filing suit,

within ninety days from the date of the Commission's order, and not thereafter, against the Commission at its domicile. All cases contesting orders of the Commission, both in the trial and appellate courts, shall be tried summarily and by preference over all cases, and may be tried either in chambers, or at term time. Appeals from decisions of the trial court shall be direct to the Supreme Court, and shall be returned within ten days after the granting of the appeal. When the Commission appeals no bond shall be required.

§6. Public service commission; orders; penalties for violation

Section 6. If any common carrier or public utility now, or which may hereafter be placed, under the control of the Commission, shall violate any of the rates, tolls, fares, or charges, or orders or decisions of the Commission, such common carrier or public utility shall forfeit and pay to the State a penalty to be fixed by the Commission of not less than one hundred ($100.00) dollars, nor more than five thousand ($5,000.00) dollars, for each violation, to be recovered before any court of competent jurisdiction, at the suit of the State, at the domicile of the Commission.

§7. Public service commission; local regulations of utilities; retention or surrender

Section 7. Nothing in this article shall affect the powers of supervision, regulation and control over any

street railway, gas, electric light, heat, power, water works, or other local public utility, now vested in any town, city or parish government unless and until at an election to be held pursuant to laws to be hereafter passed by the Legislature, a majority of the qualified electors of such town, city, or parish, voting thereon, shall vote to surrender such powers. In the event of such surrender such powers shall immediately vest in the Louisiana Public Service Commission; provided, that where any town, city, or parish shall have surrendered as above provided, any of its powers of supervision, regulation and control respecting public utilities, it may in the same manner, by a like vote, re-invest itself with such powers.

§8. Public service commission districts

Section 8. The following Public Service Commission Districts are hereby established, and the successor of each commissioner in office when this Constitution is adopted, whether for unexpired or full terms, shall be chosen from the district corresponding to the Railway Commission District from which he was chosen, viz.: The First District shall comprise the parishes of Orleans, Plaquemines, St. Bernard, Jefferson, St. Charles, St. John the Baptist, and St. James. The Second District shall comprise the parishes of Iberville, Ascension, Assumption, Lafourche, Terrebonne, St. Mary, Iberia, St. Martin, Lafayette, Vermilion, Cameron, Calcasieu, Beauregard, Allen, Jefferson Davis, Evangeline, Acadia, Avoyelles, St. Landry,

Pointe Coupee, West Baton Rouge, West Feliciana, East Feliciana, East Baton Rouge, St. Helena, Livingston, Tangipahoa, Washington, and St. Tammany. The Third District shall comprise the parishes of Rapides, Vernon, Sabine, Grant, Natchitoches, Winn, Red River, De Soto, Caddo, Bossier, Webster, Bienville, Concordia, Caldwell, La Salle, Franklin, Tensas, Madison, Richland, Ouachita, Jackson, Lincoln, Union, Morehouse, East Carroll, West Carroll, Claiborne, and Catahoula.

§9. Public service commission; applicability of laws relating to railroad commission

Section 9. Until otherwise provided by the Legislature, all laws enacted by the General Assembly of the State of Louisiana since the adoption of the Constitution of 1898, and in effect at the time of the adoption of this Constitution, affecting, concerning, or relating to the Railroad Commission of Louisiana, not inconsistent with any of the provisions hereof, shall be construed as referring and applying to the Louisiana Public Service Commission, and nothing in this Constitution shall be construed as in any manner impairing or affecting such laws.

APPENDIX D

Louisiana State Constitution of 1974

Section 21. Public Service Commission

Section 21. (A) Composition; Term; Domicile. There shall be a Public Service Commission in the executive branch. It shall consist of five members, who shall be elected for overlapping terms of six years at the time fixed for congressional elections from single member districts established by law. Each commissioner serving on the effective date of this constitution shall be the commissioner for the new district in which he resides and shall complete the term for which he was elected. The commission annually shall elect one member as chairman. It shall be domiciled at the state capital, but may meet, conduct investigations, and render orders elsewhere in this state.

(B) Powers and Duties. The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

(C) Limitation. The commission shall have no power to regulate any common carrier or public utility owned, operated, or regulated on the effective date of

this constitution by the governing authority of one or more political subdivisions, except by the approval of a majority of the electors voting in an election held for that purpose; however, a political subdivision may reinvest itself with such regulatory power in the manner in which it was surrendered. This Paragraph shall not apply to safety regulations pertaining to the operation of such utilities.

(D) Applications, Petitions, and Schedules; Protective Bond and Security. (1) Within twenty days after a common carrier or public utility files a proposed rate schedule which would result in a change in rates, it shall give notice thereof by publication in the official state journal and in the official journal of each parish within the geographical area in which the schedule would become applicable.

(2) Within twelve months after the effective filing date, the commission shall render a full decision on each application, petition, and proposed rate schedule.

(3) After the effective filing date of any proposed schedule by a public utility which would result in a rate increase, the commission may permit the proposed schedule to be put into effect, in whole, or in part, pending its decision on the application for rate increase and subject to protective bond or security approved by the commission. If no decision is rendered on the application within twelve months after such filing date, the proposed increase may be put into effect, but only if

and as provided by law and subject to protective bond or security requirements, until final action by a court of last resort.

(4) If a proposed increase which has been put into effect is finally disallowed, in whole or in part, the utility shall make full refund, with legal interest thereon, within the time and in the manner prescribed by law.

(E) Appeals. Appeal may be taken in the manner provided by law by any aggrieved party or intervenor to the district court of the domicile of the commission. A right of direct appeal from any judgment of the district court shall be allowed to the supreme court. These rights of appeal shall extend to any action by the commission, including but not limited to action taken by the commission or by a public utility under the provisions of Subparagraph (3) of Paragraph (D) of this Section.

APPENDIX E

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